APPEAL

OF

EXECUTORS OF ESTATE

OF

JOHN GIBSON, Deceased,

THIRD DIST., PENN'A,

From ASSESSMENT and COLLECTION of INCOME TAX.

CLAIM FOR REFUNDING.

James Brady, Printer, 104 Hudson St.

History of the Case.

JOHN GIBSON, a resident of Philadelphia Pa., died on the tenth day of March A. D. 1865. A tax amounting to Twenty thousand six hundred and forty $\frac{20}{100}$ dollars was afterwards assessed upon his income for the year 1864. The return was made at the direction of the U. S. assistant assessor. The tax was paid by the executors of his estate on June 29th 1865. The Commissioner of Internal Revenue had previously, under date of June 9th. prohibited the assessment or collection of taxes on the incomes for 1864, of persons dying before May 1st, 1865.

It is now sought to recover the amount paid.

Philadelphia June 10th, 1871.

Hon. Alfred Pleasonton,

Commissioner of Internal Revenue.

Sir,

On April 27th last, we forwarded to your office, on form No 46, the claim of Henry C. Gibson and James T. Young, surviving exccutors of the estate of John Gibson, deceased, for the sum of Twenty thousand six hundred and forty $\frac{20}{100}$ dollars, being the amount of taxes illegally assessed and collected upon the gains, profits and income of said John Gibson during the year 1864.

Assuming the evidence, as to the facts contained in the documents accompanying the claims, to be incontestible, we now take the liberty of submitting the following brief argument in support of the legality and equity of the claim.

The question at issue may be stated thns. Was it the intention of Congress, to levy a tax *only upon the income of persons living on the first day of May* succeeding the enactment of the law and annually thereafter, or was it the intention to levy the tax not only upon the income of such living persons, but also to compel the estates of deceased persons to pay a tax upon the income of such as may have lived, during any portion of the calendar or assessment year preceding the date of assessment.

Sec. 116 Act. March 3rd, 1865, enacts, "That there

shall be levied, collected and paid annually upon the annual gains, profits and income of *every person residing* in the United States, or of any *citizen* of the United States *residing* abroad, whether derived from any kind of property, rents, interest, dividends or salaries, or from any profession, trade, employment or vocation, carried on in the United States or elsewhere, or from any other sourcewhatever, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars."

In Mallan, vs May, 13 Meeson & Welsby, 511, the ordinary rule of construction was declared to be, that words were to be "construed according to their *strict and primary acceptation*, unless from the context of the instrument they appear to be used in a different sense, or unless in their strict sense they are incapable of being carried out."

Again. "It is a rule" (says Burton J.) 'in the construction of statutes that in the first instance the *grammatical sense* of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention, or any declared purpose of the statute, or if it would involve any absurdity, repugnance or inconsistency in the different provisions, the *grammatical sense* must then be modified, extended, or abridged so far as to avoid such an inconvenience, but no further:" (Warburton vs Loveland, 1 Hud. and Brooke, (Irish) 648.)

Again. The meaning of things spoken or written, must be as it hath constantly received to be taken from *common acceptation*, (Ch. J. Vaughan, in Sheppard vs Gosnold; Vaugh. Rep. 169.)

"The words of a statute, if of common use, are to be taken in their natural, plain, obvious and ordinary signification and import." (1 Kent. Comm. 462.)

Now the language of the section quoted before is that there shall be levied, &c., upon the gains, profits, and income of "*every person residing in the United States,*" or of any citizen of the United States *residing* abroad. These are certainly words of common use.

We will not insult intelligence by attempting to prove that the "grammatical sense" of the words "persons residing," or "citizen residing," is person living, or living person; and surely the, "common acceptation" would sustain our construction. If we say "All persons residing in New York on a given day shall be mulcted in a certain sum, proportionate to their several incomes of the previous year," none would understand us to mean that all those who *had* resided in that city during the previous year, and who had removed therefrom before the given day, should also be mulcted.

It is not at all likely that such would be the "common acceptation" of our meaning; and if our interpretation of the language of the text be in consonance witn the "strict and primary acceptation," the "grammatical sense," and the "common acceptation," and especially if it be the "natural, plain, obvious and ordinary signification and import" of the words, we are bound to adhere to it, unless it be proved contrary to, or inconsistent with, the expressed intention or declared purpose of the statute. Since, then, John Gibson was not "residing in the United States," nor a "citizen of the United States residing abroad" at the time when the tax upon such persons accrued, viz: the first day of May 1865, the provisions of

the act did not apply, and the tax was illegally assessed and collected.

Again, "The intention of the lawgiver is to be deduced from a view of the whole and of every part of a statute taken and compared together" (1 Kent Com. 461.) and we claim that our interpretation of the section in question is the only one which will preserve the harmony and consistency of the several parts of the act.

The tax upon persons in proportion to their incomes is an annual tax, and is so declared by the endorsement on the very blanks of your office; being classified, (and properly so) with the special or license tax, provided for in the same law. It accrues at the same time, is collected by the same machinery, and is therefore unlike the tax upon manufacturers, which accrued upon the goods themselves when they were sold, or even removed for consumption or sale without being actually sold.

To assert that the income tax accrues before the other annual taxes, is to assail the harmony of the law by classifying it with taxes of an incongruous instead of a cognate nature; and if it be admitted that the income tax does not accrue before other annual taxes, our claim is conceded; for as no special tax could have been assessed on John Gibson on the first day of May 1865, neither had the income tax accrued, and hence its assessment and collection were illegal.

On the ninth day of June, 1865, the Commissioner of Internal Revenue, in a letter to Assessor Beale of Massachusetts, decided as follows:

"If a person prior to the first Monday in May in any year, make a return of income for the preceeding

year, and then dies before the first Monday of May of the year in which he makes the return, neither he or his representatives are liable for tax on the return; therefore the tax should not be assessed."

Notwithstanding the above, the assistant assessor *forced* a return of income from the representatives of John Gibson, who had died before the first Monday of May, and the tax was collected on the twenty-ninth day of June, in direct violation of the Commissioner's ruling, which was the law for the time being. Hence the acts of the subordinate officers were usurpations, and absolutely void *ab initio.*

The act of March 3d, 1865, under which the tax upon the estate of John Gibson was assessed, was (including the act of 1861,) the sixth act of Congress upon the matter of incomes. No subject, excepting the stupendous fact of the rebellion itself, received more of the study and attention of the legislative power than these very acts, and yet we are asked to assume that Congress repeatedly expressed its intention to collect such a tax, while continually failing to provide the machinery for its collection, and this too while it carefully considered the duty of Executors and other fiduciaries in reference to the incomes of their *cestuis que trust* or beneficiaries. We say it is necessary to assume such a hypothesis, because there is nothing in any of the statutes specifying the person whose duty it shall be to make return of such a tax as tnat assessed upon the estate of Gibson. That gentleman died before the day of assessment, and of course was not expected to make a return in anticipation of his decease; and that it is not the duty of his Executors to make a return of his income may be seen by a perusal of the law, which care-

fully and specifically enumerates all their duties in relation to income tax in Section 118.

It provides that "all guardians and trustees "whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return as aforesaid to the assistant assessor of the district in which such guardian or trustee resides, of the amount of income, gains and profits of any *minor or person for whom they act as guardian or trustee.*" Then follows carefully framed provision for penalties in case of neglect or refusal, but not one word in this sixth legislative act in relation to the incomes of decedents. In other words the law says, "An executor shall return the income of the heir to an estate," but not the income of the predecessor.

"It is by no means an inconvenient mode of construing statutes to presume that the legislature was aware of the state of the law at the time they passed," says Sir E. Coke. Why, then, did it not amend the law in some one of the many enactments with a view to provide for the return and payment of this tax by the executors or others.? The answer is simple. Because it never intended that it should be paid.

It is a well settled principle that penal statutes should always be construed most liberally in favor of the citizen. The excise laws are highly penal in their natnre. Now we respectfully ask that this principle be not ignored in the consideration of our case, as it would seem to be, when such a construction is adopted against us, as necessitates the performance of an act of vital importance which is not provided for in any of the statutes.

It is simply monstrous to say it was intended to be

made the duty of the executor to return the income of the decedent, when there is not one word in any of the several statutes upon which to base the assertion. Our theory, on the other hand, involves no such absurdity, but is simple this; i. e.: Congress intended to tax the income of *all persons living* in the U. S., on the first day of May,and, having said so, then made the neccessary provision for the assessment and collection thereof; and Congress did not intend to tax the incomes of persons deceased before the day of assessment, the first of May, whether the decease occurred a day or decade before, else it would have enacted all things necessary to the accomplishment of its purpose; and when we consider that the Commissioner of Internal Revenue adopted this interpretation in 1865, and yet no subsequent amendment of the law reversed his ruling, or altered the text, the strength of our position is still more apparent.

But it may be said that executors are bound to pay all debts due from the decedent. True. And if this income tax were a debt due by Gibson, his executors were bound to pay it, and provision would have been made in the Internal Revenue laws for their so doing: but we contend that by reason of Gibson's decease before the 1st day of May 1865, *it was no debt*, and when the executors paid in accordance with the dictation of the Assistant Assessor they did so illegally, and against the ruling of the then Commissioner of Internal Revenue, as well as against the equity of the case.

Having endeavored to show that the theory which would tax the estate of Gibson for the income of 1864, is not sustained either by the letter of the law, or its spirit, when interpreted by the established rules,

we now submit that there is nothing in our theory but that which is in plain accordance with both; and, not only so, but in harmony with certain practices of unquestioned legality.

For example: where an alien came into the United States, with an intention of permanently residing, he was assessed a tax in proportion to his income for the preceding year. It is clear that, in that case, no tax could have been assessed upon him except in accordance with our theory, for the simple reason, that none of the income had been gained in the U. S., and his liability was fixed by the fact of his residing here on the first day of May, while the amount for which he was liable, was *measured* by the income for the preceding year. And here is the key of our position. The income tax was assessed upon all persons *residing* in the U. S., because, among other reasons, they enjoyed the protection of the government. As a matter of juctice and expediency its amount was proportioned to the ability of each to pay, and that ability was measured and determined by the pecuniary success of each in the preceding year, simply because it was impossible to foretel the results of the current year.

Now let us suppose a case. A. B. dies March 31st 1861, having gained ten thousand dollars during the first three months of that year; and the act is enforced according to the construction of our opponents. Here it is plain that the heirs of A. B. are taxed for his gains made before the passage of the act; and, what is still more obnoxious in principle, *the act is made operative as to the income of a person dead before its passage.* This would indeed be a fearful precedent in either legislation or interpretation. Surely this would be a hideous anomaly in jurispru-

dence, especially in that of the United States. If we admit that Congress intended to tax us, and did tax us, upon the profits earned by our fathers, deceased before the act of legislation, we must be prepared to pay a tax upon the income of our grandfathers, deceased a generation before, whenever it may seem fit to some legislative power to extend the application of the principle.

There is no logical escape from this outrageous conclusion. It is no answer that the act of 1862 repealed that of 1861. The phraseology of the provisions relating to income tax are the same, and if the intent to tax living persons upon the income of dead ones existed in the one case it was present in the other, and clothed, we repeat, in the same language viz: upon the "income of every person residing" &c. ' 'If," says Blackstone, (vol 1, p 91,) If "there arise out of them (statutes) collaterally any absurd consequences, manifestly contradictory to common reason, they are with regard to those collateral consquences VOID": and Lord Christian says, "If the expression will admit of doubt, it will not then be presumed that that construction can be agreeable to the legislature, the consequences of which are unreasonable." So that, if we have any deference for those guiding lights of jurisprudence, we must at once reject a construction so repugnant to reason as that against which we contend.

It may be said that the heirs of Gibson should pay for him that which he could have been compelled to pay had he lived. If by this is meant that the estate should pay the debts of Gibson the proposition is correct; but if it means that sums of money which *never were* debts should be paid it is unsound. If that

gentleman had lived a poll tax would have accrued in Penna. in 1865, and it will not be pretended that his estate should be liable for such after his decease. Yet the proposition is applicable here, or else it means nothing in regard to our main point. The gist of the question is simply this. Was there an income tax due by Gibson on March 10th, 1865. If so, the tax must have accrued *co-instanti*, as the profits were made; and if not, the tax never accrued, and should never have been assessed.

And if the tax did accrue as the profits were made in 1864, why was ten-percentum levied upon the excess over six hundred dollars, and not exceeding ten thousand dollars, according to the act of 1865, instead of at the rate of seven and one-half per centum, the legal rate during 1864.

That at least some portion of the tax assessed was illegal is absolutely beyond dispute. For if he was liable under the act of 1864, the rate should have been seven and one half per centum instead of ten per centum as proivded for in 1865: whereas the tax was assessed as if entirely under the act of 1865, which was not operative until after his decease. The fact is the whole transaction was not only contrary to a fair interpretation of the statutes, but it was also inconsistent in its several parts, and directly opposed to the explicit instructions of the Commissioner before referred to. On the other hand when our interpretation is adopted all is harmony, consistency and justice; and in this connection we desire to call espeial attention to the fact that *all* the taxes upon incomes assessed in 1865 were assessed as at the rate of ten per centum on sums between six hundred and ten thousand dollars, as if they had accrued on the

1st of May of that year, and not as if they had accrued during 1864, when the rate would have been only seven and one half per centum. Surely this practice can be justified only by those sustaining our views.

Inasmuch as it may be said that no one, and certainly not a stranger,has a natural,but only a civil,right to a succession or legacy, the accumulations or profits of citizens are taxed when passing into the possession of successors or legatees; and all Guardians, Trustees, Executors &c., are bound to comply with the provisions of the law requiring return and payment of such taxes. But it is one thing to tax the property which passes by devise or descent, and an entirely different thing to tax the original owner for the fact of its accumalation, or rather to tax him in proportion to his success, whether he accumalates his gains or not. The first we call the Tax upon Legacies and Successions, and was duly paid by the executors of the estate of Gibson; the latter we call the Income Tax, and was paid by Mr. Gibson, whenever it accrued during his life. The first is a tax upon that portion of ones gains which may be left in possession at the time of decease; the latter is a tax upon all the profits (exceeding $600 dollars) which one may have gained during the year for which he is liable. The first is levied at a rate inversely proportioned to the degree of consanguinity in the heir; the latter is at a fixed rate, and deals only with the amount of gain. The first must be returned by the Executors, or other fiduciaries; the latter by the living person, or "person residing," who earned the profits. In case of failure in either the law provided for an estimate by the assistant assessor, and the infliction of suitable penalties for such failure.

Here are two kinds of taxes specifically defined, the return and collection of which are carefully provided for. Both have been paid. But, we are told, there is another kind of tax which is neither the one or the other, but partaking of the nature of both. This is a tax which accrues upon the profits of Propositus, and is paid by Filius out of the estate which has descended to him, and in addition to the tax upon such descent or succession. It is a tax too, which *accrues* in 1864, at the rate of seven and one half per centum, and is *assessed and paid* in 1865 at the rate of ten per centum. It may also be a tax which may have accrued upon the profits of Propositus who died before the the passage of the law in which it is said to be provided for; and, most wonderful of all, it is a tax that no one need return, and hence no one need pay. Not Propositus, for he is dead. Not Filius, for he is bound to return *his* own profits only, after the tax upon leggcies and successions have been paid; and not the executors of Propositus, for their duty is at an end when they have complied with Sections 118 and 119. Nor can the assistant assessor estimate the tax, as he can only estimate upon the failure of some one whose duty it is to make returns. Beside all this he is prohibited from assessing, and the collector from collecting by the Commissioner's instructions in the year 1865.

And when we are told that all this is in pursuance of the sixth successive enactment of able legislators upon the same subject, we are at a loss to account for the unprecedented confusion in which the subject is found. From all this it is clear that had the executors of the estate been cognizant of their rights they might have legally refused to make return, there being no provision of law or regulation of the

Office of Internal Revenue, providing for the assessment or payment of the tax it is sought to reclaim. But they paid it in obedience to the unwarranted order of a subordinate officer; who, in that very order, violated the express instructions of the Commissioner; and we respectfully submit that it is unfair to take advantage of their ready and patriotic faith in the dictum of the officials with whom they were brought in immediate connection.

Sec. 119, Act of 1864, as amended March 3rd, 1865, provides that the duties on incomes shall be levied on the 1st of May, and be due and payable on or before the thirtieth day of June in each year. And if any *person liable to pay* such duty shall neglect or refuse to pay the same, after the demand therein provided for, the amount due shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties and costs that may accrue in addition thereto, upon all the property, and rights to property, belonging to such person.

Here we see that the tax could not become a lien until after the decease of Gibson, when the property and rights to property might have been alienated, and in the hands of innocent purchasers; whereas had Congress intended to secure a share of the income as a tax upon the income *per se*, and not as we claim upon the person in proportion to the income, it would have provided for the creation of a lien upon all the property, and rights to property, from which the income was derived, and according as the profits accrued; and not have postponed the lien until the property might have passed into other hands. How different the provisions of law in relation to the tax upon manufactures. That was really intended to be a tax

upon the goods themselves, and hence a vastly different plan of assessment was provided for.

The tax upon manufactures accrued upon the products of the manufacturer, and became a lien upon the goods and the property of the manufacturer the moment they were even removed for sale, without ever having been sold. (See Sec. 86, act. of 1864 as amended March 3d, 1865.) Now had Congress intended the income tax to be levied upon the income *per se* of the manufacturer, and not as a personal tax to be paid by him in proportion to that income, it were easy to have made a similar provision for liens. But no such provision was made, simply because the tax was intended for those persons "residing" at the date of assessment, and not to be paid by the successors of the dead, as such.

Once more for the rules of construction. "A statute shall always be so construed as to operate prospectively and not retrospectively, unless indeed the language is so clear as to preclude all question as to the intention of the legislature." This is a canon of interpretation, says Justice Sharswood, in his Blackstone, (vol 1, p 91.) Now, in view of the fact that that sound lawyer, Commissioner Lewis of Pennsylvania, decided in favor of our interpretation, how can it be said that the language is so clear as to preclude all question. No matter if that decision has been reversed by others, the fact still remains that eminent authority did adopt our views; and if the foregoing "canon of interpretation," be applied to the point at issue, the case is ours; and inasmuch as the decision to which we refer, was contemporaneous with the act of 1865, and made by one supposed to be personally familiar with the views of the framers of

the act, we add the following, which also has been quoted by Justice Sharswood, as a rule of interpretation.

"Contemporaneous usage may be resorted to as evidence of the construction put upon a statute by those best acquainted with the mind and intention of the lawmaker. When a particular construction has thus been assumed and acted upon at an early day, and especially if many titles depend upon it, the courts will not at a subsequent period disturb it, even should it appear to be indefensible on principle." (McKeer *vs* Delancy, 5 Cranch 22, and others.)

Having endeavored to show that, in the legal aspect of the case, our claim is entitled to vindication at your hands, we pass with unfeigned confidence, and sincere pleasure, to the consideration of the remaining branch of the subject.

What is the Equity of the case,? "Equality is Equity," says the maxim; and pray what equality exists if the estate of Gibson be taxed under circumstances which absolved all others in that year! Yet such was the fact. Attention has been called to the ruling of the Commissioner in 1865, wherein he declared all such estates as those of Gibson exempt from income tax, and directed that such taxes which might have been already assessed should not be collected. Despite all this the assistant assessor informs Gibson's executors that they *must* make return and pay, and in their ignorance they do so: thus being mulcted as it were, in a large sum of money for the incapacity of the officer, or his inattention to the orders of his superior, while others are exempt. The income tax like all other Internal Revenue taxes were levied for the support of the Government accord-

ing to a certain fixed law, or ruling under that law. The ruling, while in existence, had the force of law. Hence the estate of Gibson was taxed in opposition to the law at that time; and when it paid a tax from which others were freed it paid more than its share; it bore a part of the common burden which was not its own; it was treated differently from other like estates; and equity was flagrantly violated. Nor could any subsequent alteration in the law or ruling impair the force of the argument, unless indeed retroactive assessments were made upon all similar estates, so as to treat all citizens alike upon principles of equality; and if we would secure equity we must either refund the tax paid by the Gibson estate, or assess and collect from all others, while we are not advised that even an attempt at the latter has yet been made.

As it stands, the case is if one of a co-partnership paid a large sum of money into the common treasury upon a certain account, while his co-partners, who were liable if he was, have paid nothing. It requires no argument to show that this is not equity. Common honesty demands that either he shall be allowed to withdraw the amount so paid, or his partners shall pay in like manner as he did. And if it be impracticable to pursue the latter course the former is at hand, for "Equity suffers no wrong without a remedy."

And we do not ask the performance of impractible things. In the administration of the excise law, much was necessarily left to the decision of the Commissioner. Interests of vast magnitude were dependent upon his interpretation of the statute. Those interests were conducted in view of his decisions, not only

as being the best exposition of the meaning of the framers, but as being the law itself for the time being. If subsequent rulings should be retro-active, so as to establish taxation in individual cases where exemption had been declared, there would be no safety in many legitimate transactions, and even the the titles to real estate might be impaired, or perhaps avoided; while if subsequent ruelings be not retro-active in this manner, the only course left, in order to avoid a gross injustice to the heirs of John Gibson, is to grant the claim and refund the amount of the tax.

We have said but little as to the equity of the case. It is self evident; and we prefer to leave it stand in its own inherent strength, unincumbered with the verbiage of argument. We do not presume to imagine that the honorable Commissioner of a high-toned and magnanimous nation, which instinctively abhors injustice, will seek to bolster up with paltry technicalities the refusal of an act of simple equity. The claim is manifest, and the power of the Department ample. We cannot believe the necessities of the government so great as to compel or even prompt it to retain a few dollars while Equity demands its return. The exchequer is flourishing, the rebellion is suppressed, peace reigns in the land, and the shadow of danger has vanished. The necessity for harsh constructions of law, or the postponement of substantial claims upon the treasury, no longer exists. We have confidence in the justice of our petition, and in the uprightness and judgment of the Commissioner; but if, in the rendition of his decission his gratification could be enhanced by any sug-

gestion of ours, we would remind him that any act of the authorities at Washington, which tends to promote public confidence in their readiness to rectify mistakes of their subordinates when made apparent, will also tend to promote the prompt collection of such taxes as such subordinates may declare to be legal, and thus avoid the expense and annoyance of embittered litigation, and the increased unpopularity of the tax upon incomes.

In conclusion we respectfully offer the following for your consideration:

That the income tax is an annual tax upon living persons in proportion to their several incomes, and not upon the income *per se*.

That any other construction of the law would involve the taxation of the profits of persons deceased before the passage of the act.

That the taxation of dividends in the hands of Railroad companies, Banks, &c., was merely for the advantages of more certain and ready collection; and does not, therefore, militate against our general theory.

That the practice of taxing incomes of foreigners who became denizens just before the day of assessment, was incompatible with any other theory of the law than the one claimed by us.

That the phraseology of the act sustains our interpretation by its "grammatical construction," and its "strict and primary acceptation;" and the words, being of common use, should be construed according to their "natural, plain, obvious and ordinary import and signification.

That our interpretation is in accordance with the

contexture, and in especial harmony with the executory provisions of the law.

That, if a doubt exist, the law should be so construed as to be prospective, and not retro-spective in its operation, and hence in our favor.

That, if a doubt exist, the excise law, being a highly penal statute, should be construed most liberally in favor of the tax payer.

That, if a doubt exist, the law should be construed in accordance with the interpretation placed upon it by authority at the time it was made, and hence in our favor. "*Contemporanea expostio est optima et fortissima in lege.*"

That, there is no provision in the law making it the duty of any person whatsoever to return the profits of others dying before the legal time for assessment, and we might have legally refused return or payment in the case of Gibson.

That the absence of such provision in repeated enactments, strongly argues the intention of Congress to tax those only who where "residing" (i. e. living) at the legal time forassessment.

That the demands of the assistant assessor and collector, for the return and payment of the tax in question, were in direct opposition to the orders of the Commissioner of Internal Revenue; and hence were acts of usurpation, and void.

That no advantage should be taken of our submission to the demands of the assistant assessor and collector in a time of public danger and necessity.

That other estates were, as a rule, exempted from taxation under similar circumstances in the year 1865.

That in a few instances in which they were asses-

sed the tax was refunded on application, (See case of Alan Wood, executor of James D. Wood, deceased, forwarded March 10th, 1865.)

That in any case Equity loudly demands that the estate of John Gibson should be treated as like estates were treated in the same year; and that no subsequent alteration of the practice can impair the force of its demand.

That the whole subject should be considered in the light of the rule, laid down by the learned and patriotic jurist, now the head of the United States Treasury Department, in the introduction to his manual of the Direct and Excise Tax System. p. 6, as follows:

"The practice of the office in the construction of the law, has been controlled by a few leading principles."

"First. To levy a tax in those cases only which are clearly provided for in the statute, and consequently whenever a reasonable doubt exists to rule against the government, and in favor of the individual."

All of which is most respectfully submitted.

J. FLETCHER BUDD,

Solicitor for Executors.

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